

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

DAVID JAMES MATTHEW,

Plaintiff,

vs.

YELLOWSTONE COUNTY, et al.,

Defendants.

CV-16-02-BLG-BMM

ORDER

Plaintiff David Matthew (Matthew) has brought this action *pro se* against various government entities and agents. Matthew alleges that the defendants violated his constitutional rights while he was confined at the Yellowstone County Detention Facility.

Matthew moved for leave to file a Second Amended Complaint on May 22, 2017. (Doc. 42). Matthew sought to amend his First Amended Complaint to include three new defendants and to re-allege claims against Defendants Riverstone Health Clinic, Yellowstone County, and Yellowstone County Sheriff Mike Linder that the Court dismissed on April 5, 2017. While Matthew's motion to amend was pending before the Court, Defendants Timothy Neiter, Steve Metzger, Justin Prindle, Carolyn Pluhar, Brian Degele, Chris Myrup, Heather Crockett and Jake Dunker (collectively the County Defendants), moved for summary judgment.

(Doc. 55). The County Defendants argued that all of the claims against them should be dismissed because they were immune from liability.

United States Magistrate Judge John Johnston entered his Order and Findings and Recommendations on January 26, 2018. (Doc. 83). Judge Johnston granted Matthew's motion to amend in substantial part. Judge Johnston allowed Matthew to amend his First Amended Complaint to include three new defendants. Judge Johnston recommended that Matthew's motion to amend be denied, however, to the extent he sought to re-allege claims against Defendants Riverstone Health Clinic, Yellowstone County and Sheriff Linder that this Court had dismissed. Judge Johnston determined that it would be futile to re-allege the dismissed claims.

Judge Johnston also recommended that the County Defendants' Motion for Summary Judgment be denied without prejudice. Judge Johnston determined that the motion for summary judgment should be denied because the motion challenged Matthew's First Amended Complaint, and that pleading was no longer the operative pleading given his Order allowing Matthew to file a Second Amended Complaint.

Matthew and the County Defendants filed objections to Judge Johnston's Findings and Recommendations. (Docs. 94, 95). The Court reviews *de novo* findings and recommendations to which objections are made. 28 U.S.C. § 636(b)(1). The Court has reviewed Judge Johnston's Findings and Recommendations *de novo*.

The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full.

Accordingly, IT IS ORDERED:

1. Matthew's Motion for Leave to File a Second Amended Complaint (Doc. 42) is DENIED to the extent Matthew seeks to re-allege claims against Defendants Riverstone Health Clinic, Yellowstone County and Sheriff Linder that this Court had dismissed.

2. The County Defendants' Motion for Summary Judgment (Doc. 55) is DENIED without prejudice. The County Defendants may file a motion for summary judgment that challenges the claims asserted in Matthew's Second Amended Complaint, if appropriate.

DATED this 14th day of March, 2018.



Brian Morris
United States District Court Judge